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July 25, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Re: Comcast Cellular Communications, Inc. Ex Parte Presentation
CC Docket No. 95-185, CC Docket No. 96-98

Dear Commissioner Quello:

Comcast Cellular Communications, Inc. ("Comcast"), by its attorneys, hereby submits this ex parte letter to address CMRS interconnection issues that are critical to the future development of a competitive local communications marketplace. If the Commission truly wishes to encourage wireless competition to the wireline monopolist in Philadelphia, then Comcast must be freed from the unjust, unreasonable, discriminatory and anticompetitively high unilateral interconnection rates Bell Atlantic charges Comcast.

Southwestern Bell Mobile Systems, Inc. - Ameritech Interconnection Agreement

Recently, Southwestern Bell Mobile Systems, Inc. ("SBMS"), the cellular affiliate of SBC, entered into an interconnection agreement with Ameritech.[1/] SBC characterizes the SBMS-Ameritech interconnection agreement as obviating the need for adoption in this docket of a federal interim bill and keep solution to LEC-to-CMRS interconnection. Although reducing the call termination rate is beneficial, the SBMS-Ameritech interconnection agreement shows the obvious imbalance in bargaining position that LECs exploit and CMRS providers must endure. Pursuant to the agreement, SBMS will be paying an interconnection rate that exceeds the incremental cost of interconnection, and a rate that effectively bars SBMS from competing in the

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1/ *See Ex Parte* Letter from D.T. Hubbard, Senior Vice President, SBC, to the Honorable Reed E. Hundt, *et al.*, Federal Communications Commission (filed May 29, 1996) ("Letter").

local exchange market.[2/] In addition, SBMS is paying a rate higher than the rate of interconnection offered to competitive local exchange carriers ("CLECs") within the state of Illinois.[3/] Indeed, now that the Telecommunications Act of 1996 (the "Telecommunications Act") is law, Ameritech's rate to SBMS would appear to discriminate unlawfully against SBMS to the extent SBMS is paying more for termination of calls than CLECs in the affected market.

That Ameritech has chosen to reduce, to some extent, its interconnection rates and to provide for mutual compensation, does not correct the abuses that have existed and continue to exist, nor does it ensure that LECs price interconnection at incremental cost, as required by the Telecommunications Act, or treat CMRS providers as co-carriers for the exchange of traffic. The evidence before the Commission demonstrates that rates charged by incumbent LECs for terminating non-wireline CMRS-originated calls grossly exceed LECs' incremental cost by *1000* percent and more.[4/]

The evidence also shows that incumbent LECs have violated and continue to violate the principles of mutual compensation by refusing to compensate CMRS providers for their costs for the transport and termination of wireline traffic.[5/]

In short, the SBMS-Ameritech agreement must be viewed with skepticism. As incumbent LECs, for example, SBC and Ameritech have a common interest in charging all interconnectors inflated rates in excess of cost, because to do so increases a potential competitor's cost of doing business. Indeed, SBC opposed a reduction in interconnection rates in

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2/ Although the revised interconnection fees that SBMS will pay Ameritech under the terms of the agreement would bring termination rates closer to LEC incremental cost over time (*e.g.* by providing for a gradual reduction to a per-minute rate of 0.5 cent per minute), the phase-in over two-plus years perpetuates inflated LEC rates. *See* SBMS-Ameritech Agreement § 3.2.

3/ In Illinois, CLECs are afforded a usage-based charge of 0.5 cent per minute for end office interconnection while SBMS will be required to pay 0.64 cent per minute at the outset, and a rate in excess of 0.5 for each year thereafter for the term of the contract. *Illinois Bell Tel. Co.*, Case Nos. 94-0096 *et seq.*, Order at 85 (Ill. Commerce Comm'n, adopted April 7, 1995).

4/ As illustrated by the attached summary of existing interconnection rates, it is plain that LECs continue to impose unjust and unreasonable call termination rates on CMRS providers, notwithstanding their incremental cost of providing access to the local exchange.

5/ See Second Report and Order, Regulatory Parity, GN Docket No. 93-252 ¶¶ 227-235 (adopted February 3, 1994, released March 7, 1994); Declaratory Ruling, 2 FCC Rcd 2910, 2915-16 (1987) (*see* attached).

filings made in these proceedings.[6] It would be irrational for the Commission to view the SBMS interconnection agreement as evidence that there is no need for decisive regulatory intervention.[7]

Discriminatory Interconnection Rates

The SBMS-Ameritech agreement also highlights an issue that transcends the terms of the agreement: CMRS providers are discriminated against *vis-a-vis* competing CLECs and adjacent incumbent LECs who are afforded co-carrier status. Indeed, LECs have made reduced termination rates or bill and keep arrangements available to CLECs for mutual transport and termination of traffic, but have refused to provide the same terms and conditions to CMRS providers.

In Maryland, for instance, Bell Atlantic provides CLECs with a termination rate of 0.5 cent per minute for tandem termination and 0.3 cent per minute for end office termination.[8] In

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6/ *See Comments of SBC Communications Inc.*, CC Docket No. 95-185 (filed March 4, 1996); *Reply Comments of SBC Communications Inc.*, CC Docket No. 95-185 (filed March 25, 1996); *see Comments of SBC Communications Inc.*, CC Docket No. 96-98 (filed May 16, 1996); *Reply Comments of SBC Communications Inc.*, CC Docket No. 96-98 (filed May 30, 1996).

7/ The abuses that prompted the Commission to initiate these proceedings continue to plague the wireless marketplace. Specifically, LECs continue to impose "take-it-or-leave-it" interconnection terms, conditions and rates on CMRS providers, notwithstanding the provisions of the Telecommunications Act or the Commission's current investigation and inquiry into LEC-to-CMRS interconnection. Even within the last month, Bell Atlantic has presented to Comcast new terms for interconnection based on an agreement "negotiated" with an anonymous CMRS provider, without the suggestion of a possibility of additional negotiation. *See Letter*, from Ken Baranowski, Account Executive, Bell Atlantic Network Services, Inc. to Ray Dombroski, Comcast Cellular Communications (dated June 20, 1996) (*see* attached). As such, Comcast is offered the intolerable choice of taking interconnection under new, but equally unlawful terms, or suffering under the unjust, unreasonable and discriminatory terms now in effect. Immediate Commission action is required to halt these prohibited carrier practices lest LECs continue to collect interconnection windfalls in the guise of making new interconnection terms "available" to CMRS carriers.

8/ *Application of MFS Intelenet of Maryland, Inc. for Authority To Provide and Resell Local Exchange and Interexchange Telephone Service; and Requesting the Establishment of Policies and Requirements for the Interconnection of Competing Local Exchange Networks*, Case No. 8584, Phase II, Order No. 72348, at 29-34 (Maryland Pub. Serv. Comm'n, issued December 28, 1995); *see also* Direct Testimony of Geoffrey J. Waldau, on Behalf of the Staff of the Maryland Pub. Serv. Comm'n, *submitted in* Case No. 8584 on June 2, 1995, at 6-7.

Ameritech's five-state operating region, Ameritech has entered into an interconnection agreement with MFS Communications Company, Inc. ("MFS"), providing a termination rate of 0.9 cents per minute.[9/] The PacTel - MFS interconnection agreement in California provides a termination rate of 0.75 cents per minute. In none of these states, however, is the reduced termination rate available to CMRS providers.[10/]

In Pennsylvania, moreover, Bell Atlantic provides CLECs with escrow agreements, pending the Public Utility Commission's consideration of its recommendation that bill and keep apply to LEC-to-CLEC arrangements in Pennsylvania.[11/] No similar interim arrangement is made available by Bell Atlantic to Comcast. There is no public policy reason why Comcast should be placed at a competitive disadvantage to CLECs by being required to pay Bell Atlantic's disproportionately and discriminatorily high termination rates.

Similarly, states cannot be permitted to manipulate CMRS providers to submit to their jurisdiction by offering preferable interconnection terms to CLECs. In Connecticut, for example, CMRS providers are offered the benefit of mutual compensation from the local telephone company only if they seek state certification as a CLEC.[12/] Moreover, as a CLEC, Connecticut would require the CMRS provider to comply with state-specific technical and operational requirements not normally imposed on CMRS providers. The Commission simply cannot allow states to extort such concessions from CMRS providers in exchange for the benefits of a lawful

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9/ *See MFS Completes Landmark Regional Co-Carrier Interconnection Agreement With Ameritech*, PR Newswire, May 22, 1996. Likewise, MFS has negotiated an interconnection rate of 0.9 cent per minute in Bell Atlantic's local exchange region, covering Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia. *See Washington Telecom Newswire*, "Bell Atlantic, MFS Sign Interconnection Agreement," July 17, 1996.

10/ However, even these reduced rates are marked up substantially and therefore are not economically justifiable given the average incremental cost of call termination of 0.2 cent per minute. *See* Dr. Gerald W. Brock, Incremental Cost of Local Usage, filed on behalf of Cox Enterprises, Inc., in CC Docket No. 94-54, on March 21, 1995; based on RAND Corporation study.

11/ *See Applications of MFS Intelenet of Pennsylvania, et al.*, Docket Nos. A-31203F0002 *et seq.*, Opinion and Order (Pennsylvania Pub. Util. Comm'n, adopted September 27, 1995).

12/ *See* State of Connecticut Department of Public Utility Control, DPUC Investigation into Wireless Mutual Compensation Plans, *Decision*, Docket No. 95-04-04, at 13 (September 22, 1995) (prohibiting incumbent local exchange carriers from entering into reciprocal compensation agreements with wireless carriers).

interconnection arrangement. Specifically, the Commission's rules must take a most favored nation approach to interconnection, requiring that all interconnecting carriers be offered incremental cost-based rates for the termination traffic on LEC facilities. Non-discriminatory treatment must be the hallmark of the Commission's LEC-CMRS interconnection framework.

Need for Pro-Competitive, Aggressive and Immediate Commission Action

Immediate and aggressive Commission action, rather than rhetoric, is required to correct a situation that for too long has crippled the ability of cellular providers to obtain reasonably priced interconnection. Specifically, the FCC must take the following steps to promote competition in the telecommunications marketplace:

(1) The Commission must state unequivocally that the exorbitant LEC-CMRS interconnection rates reflected in the attached chart are unjust and unreasonable.

(2) The Commission must confirm that the basis for determining just and reasonable interconnection rates for transport and termination must employ long run incremental cost ("LRIC") as the relevant standard.

(3) The Commission must recognize explicitly that any distinction between CLECs and CMRS providers for purposes of determining interconnection rates is *prima facie* discriminatory and impermissible.

(4) The Commission must confirm that mutual and reciprocal compensation has been the rule for co-carrier interconnection since 1987 and that carriers that have failed to embrace such arrangements have violated, and continue to violate, an express Commission mandate. Consequently, the Commission must compel immediate compliance.

(5) The Commission must adopt an interim solution for carriers currently being subjected to unjust and unreasonable interconnection rates. Specifically, the Commission must establish an interim rate no higher than 0.3 of a cent per minute. The Commission also must provide that existing LEC-to-CMRS interconnection agreements are abrogated to the extent they require payments for interconnection in excess of the incremental cost of call termination.[13/]

13/ *See FPC v. Sierra Pacific Power Co*, 350 U.S. 348, 355 (1956); *United Gas Line Co. v. Mobile Gas Serv. Corp* , 350 U.S. 332, 337-8 (1956).

> To the extent that the rates ultimately negotiated between CMRS providers and LECs deviate from the interim rate, the Commission should adopt true-up procedures to reconcile the rates with the cost.[14/] Under such circumstances, no party is disadvantaged.

Unless the Commission establishes the low cost-based interim rate for interconnection the record supports, LECs will have no incentive to negotiate with CMRS providers and will continue reaping monopoly rents for interconnection to their bottleneck facilities. Moreover, to require negotiation without establishing an interim rate only will encourage needless administrative hearings and litigation as injured parties seek relief from unjust, unreasonable and discriminatory interconnection rates. Requiring negotiation without an interim rate will permit LECs to continue to impose inflated rates while foreclosing CMRS providers from obtaining remuneration for continued violations of the Commission's interconnection rules and policies.

By relying solely upon the Section 252 negotiation process, CMRS providers could be barred from obtaining justified relief for payment of discriminatory termination rates to the LECs for at least 9 months, if not longer. Having entered into interconnection agreements with CLECs, the LECs have no incentive to negotiate interconnection agreements with CMRS providers for purposes of satisfying their Telecommunications Act duties. Furthermore, because Section 271(c)(1)(A) excludes cellular service providers from the definition of a "facilities-based service provider" with whom a BOC must interconnect to obtain interLATA authority under Section 271, BOCs have no statutory incentive to begin to negotiate an interconnection agreement with Comcast, let alone to correct existing uneconomically high termination rates that it charges CMRS carriers. Accordingly, under the "voluntary negotiation" process, LECs could stonewall for the full 135 days specified under Section 252(b) before a cellular licensee would be able to exercise its right to request arbitration from the state. Furthermore, the state commission has the discretion to defer resolution of arbitration issues for a period of 9 months from the time that a cellular carrier initially requested interconnection.

14/ The Commission and courts have long-recognized the Commission's statutory authority and the administrative and competitive benefits of imposing an interim interconnection rate pending resolution of complex and potentially protracted cost inquiries necessary ultimately to set a permanent, reasonable rate. *See Lincoln Tel. & Tel. v. FCC*, 659 F.2d 1092, 1107-8 (D.C. Cir. 1981); *Exchange Network Facilities for Interstate Access*, Order on Reconsideration, CC Docket No. 78-371, 93 F.C.C.2d 739, 758-763 (1983), *aff'd mem. sub nom., GTE Sprint Communications Corp. v. FCC*, 733 F.2d 966 (D.C. Cir. 1984); *Western Union Telegraph Co.*, Memorandum Opinion and Order on Reconsideration, CC Docket No. 78-97, 1 FCC Rcd 829, 833-4 (1986).

Finally, the Commission must conclude that federal jurisdiction unmistakably extends to CMRS calls that are interstate. In fact, not only does the Commission have authority to impose obligations on LECs for the interconnection of interstate calls, it is required to do so. As such, the Commission must make plain that Sections 251 and 252 of the Telecommunications Act, which apply to the interconnection of intrastate services, impose no limitation on the Commission's ability to set interstate interconnection policies and rates. Similarly, the Commission must confirm its authority to resolve interstate interconnection rate complaints pursuant to Section 208 of the Communications Act.[15/]

Pursuant to Section 1.1206 of the Commission's rules, an original and three copies of this *ex parte* communication are being filed with the Secretary's office. If you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

Leonard J. Kennedy

Counsel for
Comcast Cellular Communications, Inc.

15/ *See* Section 2(a) of the Communications Act of 1934, 47 U.S.C. § 2(a); *Ambassador, Inc. v. United States*, 325 U.S. 317, 323 (1945) (the supervisory power of the FCC extends to charges, practices. classifications, and regulations in connection with interstate communications service); *see also Louisiana Public Serv. Comm'n v. FCC*, 476 U.S. 355 (1986).

VARIATION IN LEC CALL TERMINATION RATES

Comcast Cellular Communications, Inc. ("Comcast Cellular") submits this chart to show (i) the unjust and unreasonable call termination rates paid by cellular carriers in existing LEC-to-cellular interconnection arrangements in light of cost analyses provided in this docket, and (ii) the discriminatory nature of those charges in light of the call termination rates established in recent LEC-to-CLEC interconnection agreements and state orders. Based on the estimates of Dr. Gerald W. Brock and the RAND Corporation study, described more fully below, the average incremental cost of call termination is 0.2 cent per minute.

BELL ATLANTIC RATES IMPACTING COMCAST	**SOURCE**	**COMMENT**
2.5 cents per minute	Existing Bell Atlantic - Comcast Cellular interconnection agreement	Over 1000 percent above average incremental cost.
1.2 cents per minute	Bell Atlantic, Comments in CC Docket No. 96-98 at 43.	Even though Bell Atlantic claims 1.2 cents to be presumptively lawful, it charges Comcast Cellular 2.5 cents pèr minute.
0.9 cent per minute (tandem termination) 0.7 cent per minute (end office termination)	Bell Atlantic-Virginia - Jones Intercable interconnection agreement	Exceeds LRIC. Available only to CLECs.
0.5 cent per minute for tandem termination 0.3 cent per minute for end office termination	*Application of MFS Intelenet of Maryland, Inc.*, Case No. 8584, Phase II, Order No. 72348, at 29-34 (Maryland Pub. Serv. Comm'n, issued December 28, 1995); *see also* Direct Testimony of Geoffrey J. Waldau, on Behalf of the Staff of the Maryland Pub. Serv. Comm'n, *submitted in* Case No. 8584 on June 2, 1995, at 6-7.	Tandem rate is more than double what Maryland PSC staff found Bell Atlantic's costs, even including shared and common costs, to be (*i.e.* less than 0.3 cent per minute for tandem termination). Available only to CLECs.
0.9 cent per minute	Bell Atlantic-MFS interconnection agreement, throughout Bell Atlantic operating region (Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia)	Exceeds LRIC.
Contributions to reciprocal compensation escrow account ($5000 initial deposit and $3,250 per month) pending adoption of permanent local call-termination rate	*See Applications of MFS Intelenet of Pennsylvania, et al.*, Docket Nos. A-31203F0002 *et seq.*, Opinion and Order (Pennsylvania Pub. Util. Comm'n, adopted September 27, 1995).	Applies only to Bell Atlantic arrangements with CLECs. Does not guarantee interconnectors recovery for overpayments or costs for terminating Bell Atlantic traffic during the interim period.

0.2 cent per minute	Dr. Gerald W. Brock, Incremental Cost of Local Usage, filed on behalf of Cox Enterprises, Inc., in CC Docket No. 94-54 on March 21, 1995; based on RAND Corporation study.	Most comprehensive survey of LEC incremental cost of call termination. GTE, Pacific Bell and California Public Utilities were members of the cost study team.
OTHER CALL TERMINATION RATES	**SOURCE**	**COMMENT**
16.4 cents per minute	Maximum per minute charge for call termination under existing LEC-to-cellular interconnection arrangements. *Interconnection Compensation Perspective*, Malarkey-Taylor Associates, Inc. and Economic and Management Consultants International, *reprinted in* Proceedings of PCIA Leg/Reg/WINC Meeting at 9 (February 8, 1996).	Over 8000 percent above average incremental cost.
1.8 cents per minute to be reduced to .0075 cents per minute (for tandem termination) and .005 cents per minute (for end office termination) over at least three-year period.	Southwestern Bell Mobile Systems, Inc. - Ameritech interconnection agreement	No mechanism to make SBMS whole for overpayments during the three-year phase-in period before rate reaches incremental cost. As RBOC-to-RBOC cellular affiliate contract, not representative of typical LEC-to-non-wireline CMRS experience.
1.3 cents per minute	United States Telephone Association, Comments in CC Docket No. 95-185 at Attachment	Unjustly adds $20 billion annual LEC universal service subsidy and various overhead costs onto its calculation of incremental cost. Uses misleading switched access average figure.
1.0 cent per minute	BellSouth - Time Warner interconnection agreement, in Alabama, Florida, Georgia and Louisiana.	Exceeds incremental cost. Available only to CLECs.
Between 1.0 and 0.5 cent per minute	Pacific Bell, Comments in CC Docket No. 95-185 at 55.	Offers no engineering or econometric studies to support these assertions.
0.9 cent per minute	Ameritech-MFS interconnection agreement, throughout Ameritech operating region (Illinois, Indiana, Michigan, Ohio and Wisconsin)	Exceeds long run incremental cost ("LRIC").† Available only to CLECs.
0.75 cent per minute	PacTel - MFS interconnection agreement in California	Exceeds LRIC. Available only to CLECs.

0.75 cent per minute for tandem termination 0.5 cent per minute for end office termination	*Illinois Bell Tel. Co.*, Case Nos. 94-0096 *et seq.*, Order, at 85 (Ill. Commerce Comm'n, adopted April 7, 1995).	Includes an "identifiable contribution level" over and above LRIC. Available only to CLECs.
0.35 cent per minute	Pacific Bell and INDETEC International, The Cost Proxy Model, California Universal Subsidy, 1996	Model designed to replicate forward-looking costs of Pacific Bell's operations and represents engineering rates and cost-of-equipment Pacific Bell actually uses. The 0.35 cent per minute figure also is marked up 31% over TSLRIC to account for shared and common costs. Estimated TSLRIC would be 0.24 cent per minute.
Zero-based, interim bill and keep	Arizona, California, Connecticut, Florida, Iowa, Michigan, Oregon, Texas, Washington, Wisconsin	Many state regimes limit bill and keep only to CLECs.

†/ "Long run incremental cost" or "LRIC" is the forward-looking cost of any specified change in volume of output or service in the long run. This term should be used in the context of a specific existing output or service. LRIC does not include overheads. For instance, the cost of adding additional capacity for transport and termination to a carrier's existing capacity for that functionality can be calculated on a LRIC basis. Use of LRIC as a costing standard is appropriate when a firm must recover the additional costs associated with providing specific capacity.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

SECOND REPORT AND ORDER

Adopted: February 3, 1994; **Released:** March 7, 1994

By the Commission: Commissioner Barrett issuing a statement.

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at this time, state regulation of the rates LECs charge for PCS interconnection.[468] In addition, several parties support the Commission's proposal to require LECs to tariff rates for PCS interconnection.[469]

b. Discussion

227.The *Notice* refers to the right of mobile service providers, particularly PCS providers, to interconnect with LEC facilities. The "right of interconnection" to which the *Notice* refers is the right that flows from the common carrier obligation of LECs "to establish physical connections with other carriers" under Section 201 of the Act.[470] The new provisions of Section 332 do not augment or otherwise affect this obligation of interconnection.

228. Previously, the Commission has required local exchange carriers to provide the type of interconnection reasonably requested by all Part 22 licenses.[471] In the case of cellular carriers, the Commission found that separate interconnection arrangements for interstate and intrastate services are not feasible. Therefore, we concluded that the Commission has plenary jurisdiction over the physical plant used in the interconnection of cellular carriers and we preempted state regulation of interconnection. We found, however, that a LEC's rates for interconnection are severable because the underlying costs of interconnection are segregable. Therefore, we declined to preempt state regulation of a LEC's rates for interconnection. The Commission recognized, however, that the charge for the intrastate component of interconnection may be so high as to effectively preclude interconnection. This would negate the federal decision to permit interconnection, thus potentially warranting our preemption of some aspects of particular intrastate charges.[472]

229. The Commission has allowed LECs to negotiate the terms and conditions of interconnection with cellular carriers. We required these negotiations to be conducted in good faith. The Commission stated, "we expect that tariffs reflecting charges to cellular carriers will be filed only after the co-carriers have negotiated agreements on interconnection."[473] We also preempted any state regulation of the good faith negotiation of the terms and conditions of interconnection between LECs and cellular carriers. The *Notice*, however, requested comment on whether we should require LECs to file tariffs specifying interconnection rates for PCS providers.

230. We see no distinction between a LEC's obligation to offer interconnection to Part 22 licensees and all other CMRS providers, including PCS providers. Therefore, the Commission will require LECs to provide reasonable and fair interconnection for all commercial

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[468] MCI Comments at 9; *see also* CTP Comments at 2 (contending that the Commission does not need to preempt the rate setting of a settlements process as long as the same process is used for independent telephone companies); Nevada Reply Comments at 1-3 (Commission preemption is neither necessary nor permissible). *But see* Pagemart Comments at 20 (urging preemption).

[469] Cox Comments at 5-6; CTP Comments at 1-2; Pagemart Comments at 19; *see also* Comcast Comments at 11-12 (urging the Commission to order LECs to submit sufficient information, such as intrastate interconnection tariffs and all contracts for interconnection and for billing and collection). *But see* Pacific Comments at 20 (opposing a federal tariff requirement).

[470] 47 U.S.C. § 201.

[471] *Interconnection Order*, 2 FCC Rcd at 2913.

[472] *Id.* at 2912.

[473] *Id.* at 2916.

mobile radio services. The Commission finds it is in the public interest to require LECs to provide the type of interconnection reasonably requested by all CMRS providers. The Commission further finds that separate interconnection arrangements for interstate and intrastate commercial mobile radio services are not feasible (*i.e.*, intrastate and interstate interconnection in this context is inseverable) and that state regulation of the right and type of interconnection would negate the important federal purpose of ensuring CMRS interconnection to the interstate network. Therefore, we preempt state and local regulations of the kind of interconnection to which CMRS providers are entitled.[474]

231. With regard to the issue of LEC intrastate interconnection rates, we continue to believe that LEC costs associated with the provision of interconnection for interstate and intrastate cellular services are segregable,[475] and, therefore, we will not preempt state regulation of LEC intrastate interconnection rates applicable to cellular carriers at this time. With regard to paging operations, PageNet and Pagemart argue that we should preempt state regulation of LEC rates charged to paging carriers for interconnection because LEC costs associated with such interconnection are not jurisdictionally segregable.[476] We do not find the arguments presented by PageNet and Pagemart to be persuasive, in light of the fact that our Part 22 Rules already have been applied to LEC interconnection rates for common carrier paging companies, as well as cellular companies, without any complaints.

232. In providing reasonable interconnection to CMRS providers, LECs shall be subject to the following requirements. First, the principle of mutual compensation shall apply, under which LECs shall compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on LEC facilities. Commercial mobile radio service providers, as well, shall be required to provide such compensation to LECs in connection with mobile-originated traffic terminating on LEC facilities. This requirement is in keeping with actions we already have taken with regard to Part 22 providers.[477]

233. Second, we require that LECs shall establish reasonable charges for interstate interconnection provided to commercial mobile radio service licensees. These charges should not vary from charges established by LECs for interconnection provided to other mobile radio service providers. In a complaint proceeding, under Section 208 of the Act, if a complainant shows that a LEC is charging different rates for the same type of interconnection, then the LEC shall bear the burden of demonstrating that any variance in such charges does not constitute an unreasonable discrimination in violation of Section 202(a) of the Act.

234. Third, in determining the type of interconnection that is reasonable for a commercial mobile radio service system, the LEC shall not have authority to deny to a CMRS provider any form of interconnection arrangement that the LEC makes available to any other carrier or other customer, unless the LEC meets its burden of demonstrating that the provision of such interconnection arrangement to the requesting commercial mobile radio service provider either is not technically feasible or is not economically reasonable.

235. Although we requested comment on whether LECs should tariff interconnection rates for PCS providers only, our experience with cellular interconnection issues and our review

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[474] *See Louisiana PSC*, 476 U.S. at 375 n.4; Maryland Pub. Serv. Comm'n v. FCC, 909 F.2d 1510 (D.C. Cir. 1990); California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Illinois Bell Tel. v. FCC, 883 F.2d 104 (D.C. Cir. 1989); *NARUC II*; *Texas PUC*; *NCUC I*; *NCUC II*.

[475] *See Interconnection Order*, 2 FCC Rcd at 2912.

[476] PageNet Comments at 28 n.75; Pagemart Comments at 12.

[477] *See Interconnection Order*, 2 FCC Rcd at 2915.

of the comments have convinced us that our current system of individually negotiated contracts between LECs and Part 22 providers warrants review and possible revision.[478] We believe that commercial mobile radio service interconnection with the public switched network will be an essential component in the successful establishment and growth of CMRS offerings. From the perspective of customers, the ubiquity of such interconnection arrangements will help facilitate the universal deployment of diverse commercial mobile radio services. From a competitive perspective, the LECs' provision of interconnection to CMRS licensees at reasonable rates, and on reasonable terms and conditions, will ensure that LEC commercial mobile radio service affiliates do not receive any unfair competitive advantage over other providers in the CMRS marketplace. Therefore, we intend to issue a Notice of Proposed Rule Making requesting comment on whether we should require LECs to tariff all interconnection rates.[479]

236. Although we requested comment on whether to impose equal access obligations on PCS providers, the Budget Act does not require us to make such a determination within any statutory deadline. Because this issue also arises in a pending petition for rule making filed by MCI[480] regarding equal access obligations for cellular service providers, we believe it is more efficient to defer any final decision in this area and to address these issues in the context of the MCI petition.

237. The *Notice* also requested comment on whether we should require CMRS providers to provide interconnection to other carriers. As commenters point out, our analysis of this issue must acknowledge that CMRS providers do not have control over bottleneck facilities. In addition, we note that the relatively few complaints the Commission has received concerning cellular carriers' denial of interconnection have involved allegations that cellular carriers refused to allow resellers to interconnect their own facilities with those of cellular carriers under reasonable or non-discriminatory terms and conditions.[481] This situation may change as more competitors enter the CMRS marketplace. In particular, PCS providers may wish to interconnect with cellular facilities, or vice versa, which could also allow for the advantages of interconnecting with a LEC. Also, we do not wish to encourage a situation where most commercial traffic must go through a LEC in order for a subscriber to send a message to a subscriber of another commercial mobile radio service. Because the comments on this issue are so conflicting and the complexities of the issue warrant further examination in the record, we have decided to explore this issue in a Notice of Inquiry. This proceeding will address many of the related issues raised by commenters. For example, MCI raises the issue of whether CMRS providers' interconnection obligations include providing access to mobile location data bases, and providing routing

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[478] *See, e.g.*, Comcast Comments at 6-10; Cox Comments at 2-4; GCI Comments at 4-5; MCI Comments at 3; Rig Comments at 6 & n.3.

[479] This *Notice* may also request comment on whether we should mandate specific tariff rate elements and, if so, how these rate elements should be structured, or whether we should apply alternative requirements on LECs that would ensure reasonable interconnection charges for CMRS providers.

[480] MCI Telecommunications Corp., Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, Petition for Rule Making, RM-8012, filed June 2, 1992. We note that the federal court having jurisdiction over the Modification of Final Judgment in the Bell System divestiture proceeding may be asked to determine whether equal access obligations attach to GTE's or the Bell Operating Companies' offering of PCS.

[481] *See, e.g.*, Continental Mobile Tel. Co. v. Chicago SMSA Limited Partnership, File No. E-92-02 (filed Oct. 9, 1991); Cellnet Communications, Inc. v. Detroit SMSA Limited Partnership, File No. 91-95 (filed Mar. 6, 1991).

Before the
Federal Communications Commission
Washington, D.C. 20554

Report No. CL-379

In the Matter of

The Need to Promote Competition
and Efficient Use of Spectrum for
Radio Common Carrier Services

DECLARATORY RULING

Adopted: April 30, 1987; Released: May 18, 1987

By the Commission:

1. On March 25, 1986, Jubon Engineering, Inc. (Jubon) filed a Petition for Partial Reconsideration or, in the alternative, a Petition for Declaratory Ruling regarding The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carriers, *Memorandum Opinion and Order* (*Interconnection Order*). [1] Responsive pleadings were filed by BellSouth Corporation (BellSouth), the Cellular Telecommunications Division of Telocator Network of America (Telocator/Cellular), and the New York Telephone Company and New England Telephone and Telegraph Company (NYNEX).[2] In addition, a Petition for Clarification of the *Interconnection Order*, as well as a letter updating the Petition, was filed by the Radio Common Carrier Division of Telocator Network of America (Telocator/RCC).

2. Subsequently, on October 6, 1986, Telocator/Cellular filed its Cellular Interconnection Report and Request for Further Relief (Cellular Report). The *Cellular Report* was filed at the request of the Commission in the *Interconnection Order*. Because the *Cellular Report* raised issues relevant to the *Interconnection Order*, we decided to consider the report in this proceeding.[3] We then offered an opportunity for the public to comment on the Report.[4] Comments were filed by McCaw, BellSouth Corporation (BellSouth), Allentown Cellular Telephone Company, Harrisburg Cellular Telephone Company and Northeast Pennsylvania Cellular Telephone Company (collectively, Cellular One), NYNEX, Radiofone, Inc. (Radiofone), Southwestern Bell Telephone Company (Southwestern Bell), Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, The Ohio Bell Telephone Company and Wisconsin Bell, Inc. (collectively, Ameritech), Continental Telephone Company of Maine (Contel), First Cellular Group, GTE Service Corporation (GTE), Houston Cellular Telephone Company, Dallas Metrocel Cellular Telephone Company, Cellular One of Austin, Cellular One of San Antonio and Metro Mobile CTS of El Paso (collectively, Texas Nonwireline Carriers), American Cellular Network Corp. (AMCELL), and NewVector Communications, Inc. (NewVector). Reply Comments were filed by Bell Atlantic, McCaw, Leibowitz and Spencer, Lin Cellular Communications Corporation, Cellular Communications, Inc., Bell of Pennsylvania and Telocator/Cellular.[5]

BACKGROUND

3. In *Cellular Communications Systems*, CC Docket No. 79-318 (*Cellular Report and Order*), the Commission required the Bell Operating Companies (BOCs) to furnish interconnection to cellular systems upon terms "no less favorable than those offered to the cellular systems of affiliated entities or independent telephone companies."[6] The Commission left it to the carriers themselves to negotiate the particular interconnection arrangements.[7] In the *Interconnection Order*, the Commission considered, *inter alia*, a proposal by Telocator/RCC to establish an "Interconnection Ombudsman" to monitor interconnection developments among Public Mobile Service (PMS) licensees and exchange telephone companies. The proposal was rejected as unnecessary because the evidence of record did not "demonstrate any widespread BOC disregard of the Commission's interconnection requirements or [suggest] that any BOC is not negotiating in good faith to resolve remaining interconnection issues."[8]

4. In recognition of "developments that have taken place in cellular interconnection since 1982," however, the Commission set forth its *Policy Statement* on PMS interconnection.[9] The *Policy Statement* first stated that under the reasonable interconnection standard, a cellular carrier "should be permitted to choose the type of interconnection, Type 2 or Type 1, and that a telephone company should not refuse to provide the type of interconnection requested."[10] Although we acknowledged that Type 2 interconnection may not always be feasible, and hence not required as "reasonable interconnection," we noted that this type of interconnection is feasible as a general matter. We then stated that because the terms and conditions of interconnection depend upon numerous local factors, "we must leave the terms and conditions to be negotiated in good faith between the cellular operator and the telephone company."[11]

5. The *Policy Statement* also provided that telephone companies may not impose recurring charges solely for the cellular operator's use of NXX codes and telephone numbers.[12] A "reasonable initial connection charge" was allowed to compensate the telephone company for the costs of assigning new numbers. However, we stated that because cellular companies are co-carriers in the local exchange network, they are "entitled to reasonable accommodation of their numbering requirements on the same basis as an independent wireline telephone company."[13] The Commission then added at footnote two:

> [W]e recognize that after several years, if the cellular carrier does not utilize all 10,000 numbers in the NXX block and there is a shortage of telephone numbers for landline subscribers, it may be necessary for the telephone company to regain access to unused numbers for its landline customers.[14]

6. Finally, the Commission stated that because cellular carriers are "generally engaged in the provision of local, intrastate, exchange telephone service," compensation arrangements among cellular carriers and local telephone companies are largely a matter of state, not federal, concern.[15] We therefore expressed no view as to the permis-

not on ITCs cannot be addressed until numerous subsidiary issues are considered. These questions are currently under review in *Contel, supra*. Therefore, we need not pursue the subject in this proceeding.

40. Jubon agrees with footnote two of the *Policy Statement*, which states that a local telephone company should regain access to unused numbers. It believes, however, that numbers should be reclaimed "uniformly among *all* exchange service providers" (emphasis retained). Otherwise, Jubon contends, the telephone company might "single out cellular carriers as initial targets for number recapture." BellSouth considers it unlikely that a telephone company would be required to regain access to numbers from cellular carriers. Hence, it regards the Jubon argument as "pure speculation." NYNEX also rejects the Jubon proposal, claiming that it would "undermine" a telephone company's ability to allocate unused numbers "based on all of the facts and circumstances in each case."

41. We re-emphasize that telephone companies must provide PMS carriers with reasonable accommodation of their numbering requirements, and that a telephone company must only reclaim as many numbers as needed to relieve its own shortage. Beyond this, we recognize that a risk of unfair competition may arise where a telephone company attempts to reclaim a disproportionate share of its needed numbers from one co-carrier, especially where this would benefit the telephone company's wireline cellular affiliate at the expense of its a nonwireline cellular competitor.[54] We believe, however, that Jubon's proposed remedy is too inflexible. If telephone company reclaimed an equal quantity of NXX codes and numbers from all co-carriers, then some co-carriers might lose needed numbers while others might retain unneeded numbers. Therefore, we will not prescribe any fixed formula for reclaiming numbers. Instead, we will expect a telephone company to reclaim from all other carriers based upon such factors as their respective growth requirements and unused surpluses, and thereby promote the most efficient allocation of the shared resource.

42. *Switching Charges*. The *Cellular Report* and Cellular One argue that because cellular operators are "co-carriers" with landline companies, the cellular operators deserve the same switching compensation arrangements that exist between the LECs.[55] Specifically, they argue that because Type 2 connected cellular systems perform their own switching functions, these carriers deserve "mutual compensation" with landline operators, so that each carrier will recover its actual switching costs incurred by terminating traffic originated on the other carrier's network. Without such a requirement, the *Report* complains, many landline companies may discriminate against Type 2 carriers by refusing to reimburse them for any switching costs or by billing them for "non-traffic sensitive access charges."

43. The landline telephone commentors argue, relying on *Indianapolis Telephone Company (Indianapolis)*, [56] that cellular operators have no right to receive the same arrangements for recurring charges as are received by ITCs. This ruling properly treats cellular operators differently from other co-carriers, they claim, because "cellular carriers generally do not obtain state certification as franchised telephone companies, are not operating under the jurisdiction of the state commissions, do not accept the responsibilities of a franchised telephone company as a provider of last resort, and do not participate in the intrastate cost and revenue pools."[57] Southwestern Bell proceeds to list the specific switching costs which it believes telephone companies should recover from cellular carriers. Incorporating by reference its Answer and Motion to Dismiss in *Contel, supra*, it claims that telephone companies incur switching costs in "functions such as memory, line and number review and administration." In addition, it claims, there are "recurring cost-of-money expenses, taxes and maintenance expenses," and the costs of monitoring traffic load to guard against unbalanced volumes of traffic and the depletion of numbers in an NXX code.

44. Despite the telephone companies' reliance on *Indianapolis, supra*, that case applied to financial arrangements relating "solely to intrastate communications."[58] We believe that under the reasonable interconnection standard, interstate switching charges, like the interstate charges for physical interconnection and the opening of NXX codes, should be cost based. A cost based system of compensation will allow telephone companies to recover their costs of switching interconnected interstate traffic. The same policy will apply to cellular carriers.

45. In establishing the reasonable interconnection standard, we also expected telephone companies and cellular carriers to observe the principle of mutual compensation for switching. That is, we expected each entity to recover the costs of switching traffic for the other entity's network. This was regarded as necessary because just as a telephone company performs switching functions to terminate mobile-to-land traffic, so may a cellular company terminate land-to-mobile traffic. It was also considered necessary in order to promote our policy of entitling cellular carriers to interconnection on the same basis as ITCs, which routinely receive mutual compensation for switching from other local exchange carriers.

46. Although the *Policy Statement* contemplated a cost based system of mutual compensation for switching, it did not distinguish between Type 1 and Type 2 service.[59] To understand the importance of this distinction, a brief description of switching functions is helpful. According to the record, when a call originates on the cellular network, it is sent to a switch. The switch screens the call to determine whether the dialed area code and NXX code are valid. It then routes the outgoing call to the landline network, which performs similar screening and routing functions to terminate the call. Conversely, when a call originates on the landline network, the telephone company performs the initial screening and routing, and the switch serving the cellular network terminates the incoming call. Under Type 1 interconnection, the telephone company owns the switch serving the cellular network. Therefore, it performs the origination and termination of both incoming and outgoing calls. Under Type 2, by contrast, the cellular carrier owns the switch, enabling it to originate outgoing calls and terminate incoming calls.[60] Hence, the Type 2 carrier incurs the switching costs for these origination and termination functions.

47. Based on the above, we believe the principle of mutual switching compensation should apply to Type 2 but not Type 1 service. Cellular carriers and telephone companies are equally entitled to just and reasonable compensation for their provision of access, whether through tariff or by a division of revenues agreement. We further find that telephone company switching charges which fail to distinguish between Type 1 and Type 2

carriers may be unjustly discriminatory in violation of Section 202 of the Act, depending on the facts of the given case.

48. According to the *Cellular Report*, reciprocal switching agreements between telephone companies and Type 2 connected cellular carriers have already been reached in some communities,[61] indicating that such arrangements are feasible. We continue to believe that these switching arrangements serve the public interest. We further believe that cellular carriers are entitled as co-carriers to participate in these arrangements, regardless of whether they participate in existing revenue pools. Contrary to the belief of the landline commentors, the right to recover switching costs is not limited to state certified carriers.

49. Should a carrier file a complaint involving interstate switching costs or charges, we will judge the appropriateness of the given arrangement using as a guide the existing compensation agreements of connecting BOCs and ITCs. Should telephone companies impose charges on a cellular carrier that differ from the charges they impose on each other, there may be discrimination under Section 202(a) of the Act. In that event, we will require the BOC to make an affirmative, documented showing of why it has imposed differing charges on the two carriers.

50. *Interexchange Services*. Jubon seeks clarification of footnote three of the *Policy Statement*, which notes that if a cellular carrier performs interexchange services in the provision of interstate automatic roaming calls, it may be regarded as an interexchange carrier and hence become liable for access charges owed to the telephone company. Jubon complains that this statement is true under some interconnection arrangements but not others. It asserts that unless the Commission's rules distinguish among these different arrangements, certain telephone companies may attempt to "impose" access charges on cellular carriers for all interstate automatic roaming calls. In a series of diagrams, Jubon proceeds to propose its own classifications of carriers under different interconnection schemes.

51. NYNEX opposes Jubon's request to determine the access status of cellular carriers in specific "hypothetical" circumstances. It believes these matters were intended by the *Policy Statement* to be negotiated by the given carriers, subject to state regulatory jurisdiction. BellSouth similarly argues that the telephone companies are "fully capable of determining the extent to which cellular carriers are providing interstate, interexchange service for purposes of access."

52. According to Section 69.5 of the Rules, access charges are assessed upon "all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services . . . ." PMS carriers are generally regarded as exchange service providers, not interexchange carriers.[62] This is reaffirmed in the *Policy Statement*.[63] Footnote three of the *Policy Statement* merely observes that there may be exceptions to that general rule.

53. We will not address Jubon's particular proposal for classifying cellular roaming services provided under certain interconnection schemes. Viewed as a petition for reconsideration, the proposal exceeds the scope of the original decision, and therefore need not be addressed. Viewed as a petition for declaratory ruling, it is also not deserving of review. The Commission is not required to issue a declaratory ruling where critical facts are not explicitly stated or there is a possibility that subsequent events will alter them.[64] Here, Jubon's proposal is not based on any particular facts or events. It does not refer to a given set of parties operating under a certain interconnection agreement. On the contrary, the Petition raises a variety of access issues affecting all PMS carriers.[65] We believe that any attempt to address these large concerns in a single declaratory ruling would be unmanageable. Moreover, such an undertaking would involve the Commission in unreliable speculations on how various PMS interconnection agreements will be structured.[66] Finally, any Commission ruling on the access status of PMS carriers could never be comprehensive because the Commission's jurisdiction over the subject is shared with other authorities. We therefore prefer to review PMS access issues on a case by case basis.

54. *Good Faith*. The Cellular Report and AMCELL accuse landline companies of failing to negotiate in good faith, as required by the *Policy Statement*.[67] The Report claims that some landline companies, for example, have "filed unilateral tariffs declaring what they will 'sell' to the non-wireline cellular companies and at what 'price.'"[68] In addition, the *Report* claims, "negotiations after a tariff filing often amount to nothing more than going through the motions."[69] They therefore urge the Commission to clarify that "good faith negotiation" requires landline companies to meet with the cellular carriers, to make sincere efforts to reach agreements without delay, and to do so within the framework of the *Policy Statement*.

55. NYNEX, Southwestern Bell and Ameritech deny that they have failed to negotiate in good faith.[70] They claim that they have negotiated dilligently but that in many cases delays were caused when "the cellular carriers withheld concurrence" on the terms of interconnection.

56. We re-emphasize the requirement in the *Policy Statement* that the terms and conditions of cellular interconnection must be negotiated in good faith. As we have stated above, the purpose of this proceeding is not to resolve specific factual disputes. Therefore, we will not herein address issues such as whether a certain tariff filing constitutes a breach of good faith. However, we expect that tariffs reflecting charges to cellular carriers will be filed only after the co-carriers have negotiated agreements on interconnection. We also expect the agreements to be concluded without delay. We will review issues of good faith on the same basis as issues of physical interconnection, NXX codes and switching charges. That is, a carrier may bring its case of good faith before the Commission under Section 208 or 312 of the Act.[71]

57. Accordingly, IT IS ORDERED, That the Petition for Partial Reconsideration or, in the alternative, the Petition for Declaratory Ruling, filed by Jubon Engineering, IS GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED IN ALL OTHER RESPECTS.

58. IT IS FURTHER ORDERED, That the Petition for Clarification filed by the Radio Common Carrier Division of Telocator Network of America IS GRANTED.

59. IT IS FURTHER ORDERED, That the Petition for Consolidation of Proceedings and the Petition for Stay filed by the Cellular Communications Division of Telocator Network of America and McCaw Communications Companies ARE DENIED.

60. IT IS FURTHER ORDERED, That the the Request for Further Relief filed by the Cellular Telecommunications Division of Telocator Network of America IS

CERTIFICATE OF SERVICE

I, V. Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, do hereby certify that on this 25th day of July, 1996, a copy of the foregoing Ex Parte letter was sent via hand delivery to the following:

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